



California Fair Political Practices Commission

November 15, 1988

Cindy Rambo
Executive Director
State Board of Equalization
1020 N. Street
P.O. Box 942879
Sacramento, CA 94279-0001

Re: Your Request for Informal
Assistance
Our File No. I-88-322

Dear Ms. Rambo:

You have written on behalf of the members of the State Board of Equalization seeking advice regarding the mass mailing provisions of the Political Reform Act (the "Act")^{1/}, as amended by Proposition 73 on the June 7, 1988 ballot. This letter is a follow-up to our Advice Letter No. I-88-272.

The answers to many of your questions were provided to John Abbott of your office in a telephone conversation earlier this month. The advice is based upon emergency Regulation 18901 which was adopted by the Commission in July. A public hearing on permanent Regulation 18901 will be held on December 6, 1988. The permanent regulation may alter our advice. A copy of the notice and text of that permanent regulation is enclosed.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

QUESTIONS

1. May the Board of Equalization print letterheads of individual Board members, in addition to a letterhead which includes all members?

2. In order to determine if the 200-piece mass mailing limit is reached, are pieces such as press releases which are otherwise exempt from the mass mailing prohibition excluded?

3. If a public information document is sent only to the news media, but the document is not itself a media release, is it subject to the mass mailing prohibition? Does it make any difference if a cover "media release" accompanied the mailing of the document?

4. May more than 200 documents be handed out either over the counter during the course of a month or at a single meeting, even though the documents could not be included in a mass mailing?

5. Is a group photograph of the Board members acceptable in instances where photos of individual Board members are not acceptable?

6. Does stamping the words "compliments of" followed by a Board member's name on an otherwise permissible document change the document to one which cannot be mailed?

7. Is it permissible for Board members to purchase additional copies of a Board publication at the full cost of producing additional copies of that publication so that Board members may mail copies at their own expense?

8. If the Board purges its mailing list as required by law, does the purge process change what was originally an unsolicited request for a document into a solicited request for subsequent issues?

CONCLUSIONS

Each of these conclusions is based upon Emergency Regulation 18901. Our advice may be altered by permanent Regulation 18901.

1. Section 89001 does not prevent the printing of letterhead for individual Board members. However, no mass mailing may be sent on such letterhead.

2. If a mailing consists partially of pieces which are exempted from the provisions of Section 89001 and partially of pieces which are not exempted, all of the pieces must be counted in order to determine if the 200-piece limit is reached.

3. The exemption for pieces sent to the media applies to any mailing sent to the media regardless of whether it is labeled as a press release.

4. When a member of the public picks up a document at the public counter of a government agency or is provided with a document at a public meeting, the member of the public is considered to have made an unsolicited request for that document. Accordingly, distribution of documents in this fashion is not subject to the prohibition of Section 89001.

5. Photographs of Board members are prohibited regardless of whether the photographs are of individual Board members or the entire Board.

6. A document which is stamped with the words "compliments of" followed by a Board member's name is subject to the prohibition of Section 89001.

7. If all costs of printing and production of a mass mailing are reimbursed, the mailing may be distributed at private expense.

8. If the Board purges its mailing list as required by law, the purge process does not change what was originally an unsolicited request for a document into a solicited request for subsequent issues.

FACTS

You are the Executive Director of the State Board of Equalization. You are requesting clarification of several issues relating to mailing programs of the elected Board members.

ANALYSIS

Section 89001 provides that no mass mailing shall be sent at public expense. The Commission has determined that the intent of the voters in adopting Proposition 73, which amended Section 89001, was to prevent elected officers from using public funds to send out newsletters and other mass mailings. (Regulation 18901, adopted as an emergency regulation, filed August 8, 1988; and Raye, et al. Advice Letters, No. A-88-220, copies enclosed.)

Regulation 18901(b) provides:

(b) A mailing will not be deemed to be prohibited by Section 89001 if the mailing meets all of the following criteria:

- (1) It is mailed by an elected officer's agency;
- (2) The stationery, forms and envelopes used for the mailings are the official stationery, forms and envelopes of the agency; and
- (3) The elected officer's name appears, if at all, only on the standard letterhead or logotype of the stationery, forms or envelopes and there are no other references to the officer, including his or her photograph or signature, in the mailing.

(Regulation 18901(b).)

Question 1

With regard to your first question, it is clear that Section 89001 does not prohibit the printing of letterhead for individual Board members for use in correspondence and mailings of less than 200 pieces. The question is whether such letterhead may be used for mailing 200 or more substantially similar pieces of mail which otherwise fit within the prohibitions of Section 89001. We do not believe that such a mailing is "mailed by the elected officer's agency" within the meaning of Regulation 18901(b)(1). It is, therefore, prohibited.

The exception provided for in subdivision (b) is a narrow one intended to assure that an agency may, in its mass mailings to members of the public, use letterhead which identifies the members of the agency without allowing elected officers to use public moneys to increase their name recognition and thus assist the officers in seeking election to that or another office. (See, Raye, et al. Advice Letters, supra.) Our advice pending adoption of a permanent regulation is that such individual letterheads do not fit within the exception provided for in Regulation 18901(b) and may not be used in mass mailings.

Question 2

With regard to your second question, subdivision (c) of the regulation provides:

(c) A mass mailing is not prohibited by Government Code Section 89001 if less than 200 pieces of mail are sent in a calendar month, or if the mailing consists only of:

- (1) Press releases sent to the media;
- (2) Mailings sent in the normal course of business from one governmental entity or officer to another governmental entity or officer;
- (3) Mailings sent in connection with the payment or collection of funds by the agency;
- (4) Mailings to persons subject to a government program administered by a governmental officer when such mailings are essential to the functioning of the program; or
- (5) Mailings required by statute, ordinance or court order.

(Regulation 18901(c), emphasis added.)

Thus a mailing must consist only of press releases sent to the media or other exempted communications in order to fall within the exception. If the mailing consists partially of exempted pieces and partially of non-exempted pieces, all of the pieces must be counted in order to determine if the 200 piece limit is reached. It should be noted that the permanent regulation being noticed for hearing at the Commission's December meeting will include an alternative which would modify this advice to exclude from the 200 piece limit, pieces which are otherwise exempted.

Question 3

With regard to your third question, we believe that the exemption applies to any mailing sent to the media regardless of whether the mailing is specifically labeled a press release.

Question 4

With regard to your fourth question, it is our interim advice, pending adoption of a permanent regulation, that members of the public make unsolicited requests for documents when they pick up documents which are available at a public counter, or when they attend a public meeting and documents related to that meeting are distributed to individuals attending the meeting. However, this interim advice is not intended to allow such individuals to facilitate distribution of copies of the documents.

Cindy Rambo
November 15, 1988
Page 6

Question 5

With regard to your fifth question, photographs of Board members are prohibited in mass mailings regardless of whether the photographs are of individual Board members or the entire Board. (Regulation 18901(b)(3).)

Question 6

With regard to your sixth question, a mass mailing may not include any reference to an elected officer outside of the standard agency letterhead. (Regulation 18901(b)(3).) Accordingly, stamping the words "compliments of" followed by a Board member's name is prohibited in a mass mailing.

Question 7

With regard to your seventh question, we have previously issued interim advice that sending of otherwise prohibited newsletters and mass mailings by any means which results in expenditure of public moneys for any of the costs of the mailing is not permitted. We further advised, in accordance with our past advice, that the costs of printing and production of a mailing are a part of the cost of sending it. (See, Raye, et al. Advice Letters, supra.) Accordingly, the costs of printing and production of a mass mailing must be reimbursed if the mailing is to be distributed at private expense and is not otherwise excepted from Section 89001.

Question 8

With regard to your eighth question, it is our interim advice that complying with the legally required purge process does not convert an otherwise unsolicited request for a document into a solicited request for that document. However, we note that this issue is addressed by Option 7 of the proposed permanent regulation. Accordingly, our advice may change based upon the Commission's conclusions regarding that option.

If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

By: John G. McLean
Counsel, Legal Division



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA

(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

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Third District, San Diego

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GRAY DAVIS
Controller, Sacramento

CINDY RAMBO
Executive Director

August 5, 1988

Ms. Diane M. Griffiths
General Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804-0807

Request for opinion on Proposition 73 mass mailings

Dear Ms. Griffiths:

I have previously written you on July 12, 1988, requesting an opinion from your office on several issues related to Proposition 73's prohibition of elected officials' mass mailings. In that letter, I asked whether the prohibition applied to some ongoing mailing programs of our elected Board Members. In this letter, I ask for clarification of several additional questions related to mass mailings, but not related to our ongoing mailing programs.

1. Is it acceptable for the Board to print letterheads of individual Board Members, in addition to a letterhead which includes all of the Board Members? We think this should be acceptable, since the letterheads of individual Board Members are among the standard Board letterheads and are always used for their individual correspondence.

2. In order to determine if the 200 piece mailing limit is reached, may we always exclude news media and government agencies from the count? For example, if the Board's annual report is mailed in a calendar month to less than 200 members of the news media, less than 200 government agencies, and less than 200 members of the public, is this a permissible mass mailing even though the document was actually mailed to more than 200 addresses? We believe we should be able to exclude news media and government agencies in determining the size of the mailing list.

3. A public information document is sent only to the news media, but the document is not itself a media release. Does the news media count as members of the public in this case? Does it make any difference if a cover "media release" accompanied the mailing of the document to the news media? We think the news media should not be included in the 200 piece mailing limit regardless of what type of document is mailed.

4. May more than 200 documents be handed out either over the counter during the course of a month, or at a single meeting, even though those same documents could not be included in a mass mailing? We think these types of distributions should be acceptable, since no mailing is involved. For example, a Board publication, "Your Privileges and Obligations as a Seller," which is signed by a Board Member, is handed out by Board staff to each person who comes to a Board office to register as a seller with the Board.

5. Is a group photograph of the Board Members acceptable in instances where photos of individual Board Members are not acceptable?

6. Does stamping the words "compliments of" followed by a Board Member's name on an otherwise permissible document change the document to one which cannot be mass mailed?

7. Is it permissible for Board Members to purchase additional copies of a Board publication, such as the Board's annual report, at the full cost of producing additional copies of that publication, so that Board Members may mail copies at their own expense? We believe this should be acceptable. While there is a public expense in producing the additional copies, that expense would be reimbursed in full by the Board Member.

8. Like all state agencies, the Board is required to annually correct and verify its mailing lists, under Government Code Section 14911. Thus, when the Board receives an unsolicited request for a Board publication, such as our annual report, we will add that name to our mailing list. Each year we will request that the recipient advise us (by return postcard) whether or not he or she wishes to continue receiving the publication. Does the Board's request to the recipient, which fulfills the requirements of Section 14911, change what was originally an unsolicited request for a document into a solicited request for subsequent issues? We believe it does not, since neither the unsolicited original request nor the later solicited request is made by or at the behest of a Board Member within the meaning of Regulation 18901(a), as currently adopted by the FPPC.

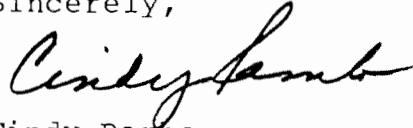
Ms. Diane M. Griffiths

-3-

August 5, 1988

Thank you for your attention to this request for your advice.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Rambo".

Cindy Rambo
Executive Director

CR:jb

cc: Honorable Ernest J. Dronenburg
Honorable Conway H. Collis
Honorable William M. Bennett
Honorable Paul Carpenter
Honorable Gray Davis



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August 5, 1988

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Fair Political Practices Commission
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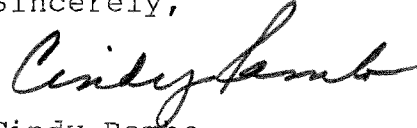
Ms. Diane M. Griffiths

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Cindy Rambo
Executive Director

CR:jb

cc: Honorable Ernest J. Dronenburg
Honorable Conway H. Collis
Honorable William M. Bennett
Honorable Paul Carpenter
Honorable Gray Davis

FILE MEMORANDUM

Name: Equalization

Tele: 5-3956

8/1/88
(Date)

Per etc w/ Alan Stucky, deputy director
of Admin. He is acting in place of
Cindy Rambo who is on vacation &
asked if 8/5/88 letter was intended to be
"opinion" or "advice." Per his conversation
w/ ^{Cindy Rambo} ~~Alan Stucky~~ this was meant to be
advice, they expected return advice in
about 3 weeks

(Date)

(Date)

(Date)

(Date)

(Date)



California Fair Political Practices Commission

August 19, 1988

Cindy Rambo
Executive Director
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0001

Re: Your Request for Advice
Our File No. 88-322

Dear Ms. Rambo:

Your letter requesting advice concerning the recently enacted campaign finance reform initiatives (Government Code Section 85100, et seq.) was received on August 11, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean, an attorney in the Legal Division, directly at (916) 322-5901.

Because of the delayed operative date of most of the provisions of these initiatives, and the numerous inquiries we are receiving relative to implementation, we are attempting to respond to questions regarding interpretation in an organized and efficient fashion. Due to the volume of requests and complexity of the issues involved, we will answer your question in a timely manner, but not within the usual twenty-one working days. (Government Code Section 83114(b).)

If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Gregory W. Baugher
Executive Director

GWB:plh:2173LTR